

## REMARKS

### I. Introduction

Claims **1-18** are pending in the application. Claims **1**, **14**, and **16-17** are independent. Claims **14-18** were previously indicated as “withdrawn” upon request by the Examiner and based on being *provisionally* non-elected (with traverse) with respect to a Restriction Requirement imposed by the Examiner. The Examiner has withdrawn the Restriction Requirement with respect to claims **14-15** and **17-18**. Accordingly, claims **14-15** and **17-18** are no longer indicated as “withdrawn” (as indeed they never actually were withdrawn).

All pending claims (claims **1-18**) stand rejected *solely* under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent Application Publication No. 2003/0186732 (hereinafter “Viglione”).

Upon entry of this amendment, which is respectfully requested, claims **1-13** and **16** will be cancelled without prejudice or disclaimer, claims **14-15** will be amended *solely* to correct informalities, claims **17-18** will be amended, and new claims **19-22** will be added. No new matter is believed to be introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

### II. The Examiner’s Rejections

#### A. 35 U.S.C. §102(e) Rejections - Viglione

All pending claims (claims **1-18**) stand rejected solely under 35 U.S.C. §102(e) as being allegedly anticipated by Viglione. As claims **1-13** and **16** are cancelled without prejudice or disclaimer herein, this ground for rejection is *moot* with respect thereto. With respect to remaining claims **14-15** and **17-18**, Applicants respectfully traverse this ground for rejection as follows.

## 1. No *Prima Facie* Case of Anticipation

The Examiner has simply and entirely failed to show how every element of the claims is taught or suggested by the cited reference.

**a) The reference fails to teach or suggest:** *determining, based on profit inventory management data, a set of products that are available for dispensing by the vending machine (claims 14-15)*

Applicants respectfully assert that Viglione simply fails to teach or suggest limitations of claims 14-15. For example, Viglione fails to teach or suggest *determining, based on profit inventory management data, a set of products that are available for dispensing by the vending machine*.

The Examiner relies upon paragraph [0032] and “step 2” of Viglione as allegedly teaching the above-quoted limitation. Office Action, pg. 6, second bullet.

Applicants respectfully note that paragraph [0032] of Viglione describes providing “random or mystery jackpot prizes”, the awarding of which is “determined by the amount of use of the vending machine.” “Step 2” of FIG. 2 of Viglione describes setting a predetermined prize (such as the random or mystery jackpots).

Applicants are at a loss as to how the Examiner can reasonably equate the setting of random or mystery jackpot prizes in Viglione to the claimed determination of “a set of products” that are available for dispensing. Nor do Applicants comprehend how any teaching or suggestion in Viglione can reasonably be equated to the storage or use of “profit inventory management data”.

Applicants respectfully note that basing random or mystery jackpots on the amount of use of the vending machine, simply fails to equate to the above-quoted claimed embodiment. Nowhere does Viglione provide adequate written description of storing or utilizing “profit inventory management data”.

Accordingly, at least because Viglione fails to teach or suggest *determining, based on profit inventory management data, a set of products that are available for dispensing by the vending machine*, Viglione fails to anticipate claims 14-15.

Applicants therefore respectfully request that this §102(e) ground for rejection of claims **14-15** be **withdrawn**.

**b) The reference fails to teach or suggest:** *receiving, via the game, a selection of a product from the set of products, thereby defining a selected product* (claims **14-15**)

Applicants respectfully assert that Viglione simply fails to teach or suggest limitations of claims **14-15**. For example, Viglione fails to teach or suggest *receiving, via the game, a selection of a product from the set of products, thereby defining a selected product*.

The Examiner relies upon “step 3” of Viglione as allegedly teaching the above-quoted limitation. Office Action, pg. 6, fourth bullet.

Applicants respectfully note that “step 3” of FIG. 2 of Viglione is descriptive of determining whether a product is selected by the customer of the vending machine. This step appears to comprise a standard operation of most vending machines – determining which product a customer wants to purchase.

Such a standard function is quite removed from what is recited in the above-quoted claim limitation. The limitation does *not* recite determining which product the customer wants to buy – that is recited separately in the first step of claims **14-15**, where the “first product” (*i.e.*, the product the customer wants to purchase) is determined.

Instead, the above-quoted limitation describes a selection, by the customer, of a product via the game interface – *e.g.*, a product to be acquired by a winning outcome of the game. Viglione simply fails to contemplate such a feature.

Accordingly, at least because Viglione fails to teach or suggest *receiving, via the game, a selection of a product from the set of products, thereby defining a selected product*, Viglione fails to anticipate claims **14-15**.

Applicants therefore respectfully request that this §102(e) ground for rejection of claims **14-15** be **withdrawn**.

**e) The reference fails to teach or suggest:** *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine (claims 17-18)*

Applicants respectfully assert that Viglione simply fails to teach or suggest limitations of claims 17-18. For example, Viglione fails to teach or suggest *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine.*

Applicants have reviewed Viglione and have failed to locate any teaching or suggestion of selecting products to be dispensed as game winnings where the products are selected based on “an expected profitability of the vending machine”.

Accordingly, at least because Viglione fails to teach or suggest *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine*, Viglione fails to anticipate claims 17-18.

### III. New Claims

New claims 19-22 are believed to be patentable over the cited reference at least as described herein. Further, after reviewing the cited reference, Applicants believe that the cited reference fails to teach, suggest, or render obvious at least:

(i) *receiving, by a vending machine and from a customer, an indication of a selection of a plurality of products that are available for dispensing by the vending machine for a single package price (claims 19-22);*

(ii) *determining, by the vending machine and based on stored profit management rules, whether or not the customer is entitled to a prize (claims 19-22);*

(iii) *outputting, by the vending machine and after the receiving of the indication of the selection of the plurality of products that are available for dispensing by the vending machine for the single package price, a game-themed presentation that indicates to the*

*customer that the determining of whether or not the customer is entitled to a prize is based at least in part on input provided by the customer via the game-themed presentation (claims 19-22);*

*(iv) determining the prize, by the vending machine and based on stored product data, to be a specific product available via the vending machine (claims 21-22); or*

*(v) wherein the stored product data comprises one or more of: (i) a number of units of the specific product currently stored in inventory; (ii) an actual sales rate of the specific product; or (iii) a target sales rate of the specific product (claim 22).*

#### **IV. Conclusion**

At least for the foregoing reasons, it is submitted that all pending claims are in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested. Applicants' silence with respect to any comments made in the Office Action does not imply agreement with those comments.

Alternatively, if there remain any questions regarding the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 438-6867 or via e-mail at [cfincham@finchamdowns.com](mailto:cfincham@finchamdowns.com), upon the Examiner's convenience.

#### **V. Fees and Petition for Extension of Time to Respond**

Applicants hereby petition for a **one-month extension** of time and authorize the charge of **\$130.00** to Applicants' Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Applicants' Deposit Account No. 50-0271.

Furthermore, should any other extension of time be required or any other fee be due, please grant any extension of time which may be required to make this Amendment timely, and please charge any required fee to Applicants' Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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